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90-668

No.

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

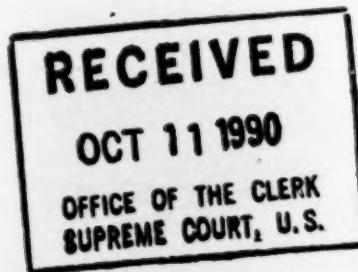
EDWARD HALAS,
Petitioner,

v.

DONALD J. QUIGG,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO U.S.
COURT OF APPEALS FOR THE FEDERAL CIRCUIT

EDWARD HALAS,
Petitioner.
P.O. Box 2682
Detroit, MI 48231





QUESTION PRESENTED

Whether, when additional evidence is presented to corroborate the reasons for obtaining a Letters Patent, on what would appear to be in the nature of a PERPETUAL MOTION DEVICE, one year would be the statutory limit for presenting such evidence for a Letters Patent. The evidence presented originally was sufficient except that it was misunderstood by a Patent Office entrenched in customs of the normal state. Then a great many years later such evidence became available and was immediately presented to corroborate the valid reasons for the issuance of the Patent at the earlier date. The application of the defence of the Statutory one year bar is an admission of error, by the Patent Office, who are required to issue the Patent as it was applied for with all relevant dates as originated in prior time.

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EDWARD HALAS,

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DONALD J. QUIGG

Respondent.

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Edward Halas, prays that a writ of certiorari issue to review the judgement of the U.S. Court of Appeals, for the Federal Circuit.

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OPINIONS BELOW

1. The opinion of John H. Pratt of the United States District Court for the District of Columbia is reproduced in reduced scale on pages 16 to 22 in the Appendix. Dated 25 July 1989.
2. The Decision of Nies, Cowen, and Michel of the United States Court of Appeals for the Federal Circuit is reproduced in reduced scale on pages 23 to 27 in the Appendix. Dated 13 August 1990.

JURISDICTION

The final judgement of the United States Court of Appeals for the Federal Circuit was dated 13 August 1990. This Petition for Writ of Certiorari filed within the ninety (90) days period allowed within the rules of the Court.

STATEMENT OF THE CASE

1. The Petitioner applied in good faith for a patent in what would be the natural composition of all materials that are presently termed Superconductors. We Stress the word "all" This was erroneous denied by the Patent Office without either good or sufficient reason.
2. In page 21 of the Appendix relating to District Court Judge Pratt, the word "all" again plays a prominent part of his decision. Judge Pratt concluded that the Peitioner's total elements were cited in another patent relating to Weinigat the fourth line of page 21 .of the Appendix. This of course was grossly untrue. However Judge Pratt is not an authority in Physics and accepted the worthless statements of the Patent Office as indeed rather precious verbage, not realizing that all it really was instead was only garbage. Certainly Patent lawyers know what appeals to other lawyers and certainly

the ignorance of District Court Judge Pratt, who unwisely set himself up as some kind of authority on the interpretation of Scientific Literature. On page 2¹ of the Appendix, Judge Pratt casually defines substantive Chinese Scientific Literature as a trivial outgrowth of Nobel Prize winners Bendnortz and Muller. The interpretation of Scientific Experiments is beyond the scope and capability of any District Court Judge certainly, however well versed in law they might be, and customs, since novelty is being searched for in the diverse experiments. Judge Pratt was notified that the Petitioner's patent did cite that "Capucin's Phenomenon" had to be displayed by one or more of the elements in the Superconducting composition. Certainly Weinig was never aware of it, neither was Bendnortz or Muller, and the unlearned Patent Office may never understand the significance of it. Customarily a drum makes the greatest sound, it is however mostly empty space or hot air and the diaphragm vibrates much like a fast

talking Patent Office lawyer about to petition an Inventor of his discovery.

3. Although the decision of the Court of Appeals made some reference to Appellant, but apparently nobody on the Court of Appeal ever bothered to read it, since the grounds were not "Abuse of Discretion" but rather "Errors in Judgement", by the lower Courts. This was on the very last statement of of the Appeal court's Decision and was the unworthy summation of a bad decision. Judgement is one of the criterions for an appointment to the Court of Appeals or to any Court of Review, however good eyesight should also be included because the judges by and large do have problems in reading the lengthy briefs and to conserve time, often only read half of the briefs before them and in this case the brief by the Patent Office was read, the Appellant's was not.

REASONS RELIED UPON
FOR ALLOWANCE OF THE WRIT

Review by Certiorari would be appropriate in this matter since this invention would follow the requirement of proof as for a Perpetual Motion Machine, since Superconductors can become perpetual under some controlled conditions. A proof requirement is necessary as for example the corroborative silent testimony of the rather voluminous experiments performed in diverse approaches by the rather unheralded Chinese Scientists who labored effectively and lobbied worldwide for recognition of their contributions. It is difficult to place a monetary value on the Chinese work, but conservatively appraised, it would be worth about two million dollars in labor and supplies. A substantive amount for one inventor to amuse the Patent Office with in their rather trivial pursuits. The Petitioner did provide sufficient proof earlier, and all the Chinese contributions provide mountains more of data, good data.

ARGUMENT

ESSENTIALLY THE NOVELTY OF THE PATENT APPLICATION WAS SUCH THAT IT MAY HAVE ON THE SURFACE APPEARED IMPROBABLE TO THE ORIGINAL DISTRICT COURT JUDGE, EVEN WITH THE EVIDENCE PROVIDED BY THE PETITIONER. THE MASSIVE SUBMISSION OF CHINESE EXPERIMENTS WERE VERY CORROBORATIVE AND WITH PROPER ANALYSIS WOULD SHOW THAT AS THE PETITIONER ORIGINALLY TAUGHT, ONE OR MORE OF THE COMPOSITE ELEMENTS IN THE SUPERCONDUCTING COMPOSITION WOULD HAVE TO DISPLAY CAPUCIN'S PHENOMENON UNDER THE INTENDED ENVIRONMENTAL CONDITIONS. UNFORTUNATELY THE APPEALS COURT DID NOT CONTRIBUTE ANY WISDOM TO THE MATTER AND JUST RAMBLED WITHOUT ANY SENSE OF DIRECTION OR FORETHOUGHT.

WHERE THERE IS AN ERROR OF THE COURT, AS IT WAS IN THIS CASE, THE TIME CONDITIONS OF ONE YEAR TO RECTIFY THE MISTAKES OF A HOSTILE COURT COUNTED THE NUMBER OF TIMES THEY THREW OUT OUT THE APPELLANT'S BRIEF, ACTUALLY IT WAS SEVEN TIMES. WHILE THE APPELLATE COURT KNOWS HOW TO COUNT, THEY STILL SEEM TO HAVE DIFFICULTY IN APPRECIATING EITHER THE NOVELTY OR THE IMPORTANCE OF THE PATENT APPLICATION. THEY WOULD LEAVE THE DETERMINATION TO THE SUPREME COURT, OR HEAVEN ONE WOULD SUPPOSE.

1. First of all, Superconductors are not really new or that novel, they have always existed in the universe. Essentially the natural existence of Superconductors would fall under the category of natural trade secrets occurring in Nature. Most often supernatural or divine powers are assoc-

iated with their products what they would cause. In Nature it would appear that these compositions occur naturally and that they manifest themselves in simple coils of the minimum one turn. It would further appear that every planet with a known magnetic field would have at least one Superconducting coil at some distance between the center and the circumference. The important physical things that the coils are capable of doing is fusing simple matter into more complex matter or elements as we would understand them. The universe contains a vast amount of the basic simple matter that is even simpler than the basic known elements of Hydrogen,etc. In the bible context, God created the heavens and earth. While this is a rather simple church explanation, it is an unsatisfactory physical explanation. It is true that elements are created, however they are created by fusion as a result of these naturally occurring superconducting coils. It would appear that the coils would start small and that they

would grow larger with time under favorable conditions. In fusion process there is derived energy for heat, propulsion, or anti-gravitation or to be assimilated by some other system. Necessarily these coils can and do exist at all temperatures and pressures in Nature, Some as in the sun would exist at millions of degrees of intense heat. Further these coils are relatively independent from one another.

2. Second there are an infinite amount of actual compositions that would actually be workable for different applications and under different temperatures and pressures. No one of these compositions would fulfill all the different fusion abilities. Different coil compositions would be capable of doing different types of fusion at different rates or speeds or economy, There would be a great deal of individuality.

3. The most useful application of Superconducting materials would be to fabricate into fusion coils to manufacture different products,

such as were previously attributable to those of the Supernatural. The petitioner does not believe in miracles, only that even the Gods would be subject to the natural laws, if we only knew what they were exactly in all the diverse circumstances.

4. This knowledge isn't available anywhere else and in fact it would have been difficult to have it published in the ultra conservative Physics Magazines. The teachings are not either profane, immoral, or even sacrireligious.

5. The Petitioner claimed to have invented what could be best described as a new language by defining the ample rules of the new alphabet. It then becomes possible to creat many new compositions much as in literature, even as the very simple one assigned to Muller and Bendnortz. However to the Chinese, who did much more in the way of composition, would be more in the nature of a novel as compared to Muller and Bendnortz who would be in the category of a short story. There is some question as to whether the Patent Office

is not hopelessly confused and in this situation can't tell the difference between a Patent Application and a Copyright Application.

We would submit that the finding of Muller and Bendnortz would fall under the category of a copyright as would the more extensive findings of the Chinese. It was unfair to minimize the findings of the Chinese and inflate the findings of that attributable to Bendnortz and Muller. We would consider the findings of the Chinese to be more objective and definitive, and they will be better appreciated, once they are understood. However their publications will become classics in time for the great merit that lies within them. The Petitioner regrets being unable to attend the Chinese Conference on Superconducting materials, however the funds were unavailable for the journey. While it would have been an excellent opportunity to convey to the many Chinese scientists an appreciation of their excellent contributions to Science,

the Petitioner would really have been unable bring anything more than good wishes, no medals. The Chinese work certainly was appreciated by those versed in the Science, certainly it was a magnificent leap forward..

6. It is presumptuous of Judge Pratt to dismiss the Chinese work of little or no consequence, however it was an error in his judgement to be so vain as to think that a person versed in the common law could understand anything novel in physics without at least waiting for an explanation. It is further presumptuous of Judge Pratt to even consider that Weinig, as a businessman and not a Physicist could adequately describe or even did describe the language elements of an invention. At best Weinig would only have the rights to perhaps one or two copyright compositions, but the majority of his application would be unworkable because it did not conform to the basic physical requirements, that would be necessary.

7. The Appellate Court may have felt that the entire matter was beyond their understanding

they didn't spend any time on their final reasoning, and it would not be useful to anyone or even cast much light on the matter.

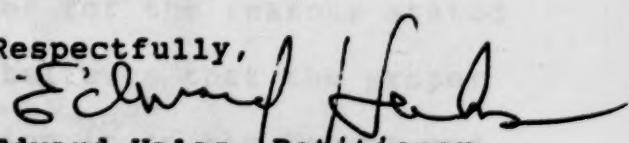
8. It places the Patent Office in a rather difficult situation in which they have the jurisdiction of Patents and also trademarks and don't really know when to apply one or the other with any degree of precision. It reminds the joke of the person who went to see a Psychiatrist because of job related stress in their defence work. After some time on the couch the Psychiatrist determined that the patient customarily worked with a barrel of two different sizes of bolts, and that the patient's duty was to sort the larger bolt into barrel "A" and the smaller bolt into barrel "B". Well the upshot was that the decisions were driving the patient crazy. We are on this occasion bringing to the Supreme Court in essence, a barrel with two different bolt sizes (Patents and Copy rights), it will be for the Court

the difficult task of sorting the items
out as a matter of precedence.

-CONCLUSION-

For the foregoing reasons , this Petition for
a Writ of Certiorari, should be granted, and
the lower Courts will be curious to know
how the matter was finally sorted out, in their
inability to properly define it or to categorize
it in a customary manner.

Respectfully,


Edward Halas, Petitioner
P.O. Box 2682
Detroit, MI 48231.

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conducive to action in the two

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concerned with a number of objectives and the
two, namely the United States and the
United Nations, are likely to be the ones to
initiate and carry out the necessary steps to
achieve the above. It is the opinion of the
writer that the two organizations are the
best suited to do this, as they are the
most representative of the world's population and the
most capable of carrying out the

John H. Nichols
Secretary, National Committee
for World War II
12700 3rd Street

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Action No. 88-3317

MEMORANDUM OPINION

Acting pro se, plaintiff, an inventor, seeks to reform an adverse judgement in a patent case, Halas V. Commissioner of Patents, No. 2026-72 (D.D.C. June 13, 1978), aff'd mem. No. 78-1849 (Dir. September 26, 1979) based on newly discovered evidence as to the patent's originality. However for the reasons stated below, this court believes that the proper place for this action is in the Patent and Trademark Office and, therefor, dismisses plaintiff's suit.

In 1969 plaintiff filed a patent application for superconducting materials and methods for making those materials. Complaint at 2 (stating that plaintiff filed the original application in 1965); see Answer stating that applicant had filed a copending application in 1965). In 1972 the patent examiner and

the Patent and Trademark Office (PTO) Board of Appeals denied plaintiff's application under 35 U.S.C. § 112. Plaintiff filed a civil action in the United States District Court for the District of Columbia under the auspices of 35 U.S.C. § 145. In 1978 Chief Judge John Markey of the Court of Customs and Patent Appeals, who was sitting in the district court by designation, dismissed the plaintiff's complaint. Plaintiff sought review of the United States Court of Appeals for the District of Columbia, but his appeal was denied in 1979. Since 1979 plaintiff has filed seven separate motions for reconsideration with the Court of Appeals; all have

been denied. 1

1 The last motion, filed in April 1989, was denied and the Court ordered that "[no] further pleadings in this appeal shall be accepted for filing unless requested by the Court"

Plaintiff has now filed what appears to be an original complaint in the United States District Court for the District of Columbia, entitled, however a "Motion to Reopen Case

Based on Additional Evidence," Because principle of res judica prohibit plaintiff from relitigating the issues presented in his original appeal, the court assumes that the plaintiff seeks a "new trial on the original issues based on additional evidence." Complaint at 3-4 . The Court also assumes, arguendo, that plaintiff, debilitated in these proceedings by acting pro se, seeks all applicable avenues of review.

Four avenues are open to a plaintiff challenging a finding of the PTO. Two methods of appeal are open to an applicant who at the time the original application is denied, is dissatisfied with the decision of the Patent and Trademark Board of Appeals. First under 35 U.S.C. § 141 the applicant may appeal directly to the United States court of Appeals for the Federal Circuit. Obviously § 141 is not applicable in the instant proceedings. Alternatively, the applicant may commence a civil action in the United States District Court for the District of Columbia under 35 U.S.C. § 145. An action under § 145" is in essence a suit to set aside the final decision

of the [PTO Board of Appeals]" Fregeau v. Mossinghoff, 776 F. 2d 1034, 1036-37(Fed. Cir. 1985) (emphasis in original) . Under § 145 if "new evidence is presented to the district court on a disputed fact question, a de novo finding will be necessary..." Id at 1038. However even if the plaintiff's "demand for judgement, " seeking an order to compel the Commissioner of Patents to issue the original patent to plaintiff, could be construed as an appeal under § 145, plaintiff is foreclosed from invoking it a second time.

Third under Rule 60 (b) or Rule 60(b) (6) , Federal Rules of Civil Procedure, a plaintiff, within one year of the entry of the original judgement , may move to reopen a case based on new evidence. In this instance the original the original adverse ruling was filed in June 13, 1978. Therefore because plaintiff's request for reconsideration was filed nearly eleven years after the original adverse ruling , this avenue is foreclosed.

The final route, which is equitable and available under rule 60 (b) (2), is to file a motion on the basis of "newly discovered evidence which" was not ... by due diligence ... discovered in time to produce it at the trial... [and which] would presumably lead to a [favorable judgement] ." Carr v. District of Columbia, 543

F. 2d. 917, 926 (D.C. cir. 1976) ; Gemveto Jewelry Co. V. Jeff Cooper Inc, 613 F. Supp. 1052 (S.D.N.Y. 1985) . The rules for setting aside a judgement and for obtaining a new trial are rigorous; a party seeking to set aside a judgement must show that the new evidence could not have been discovered in time for trial. The Court finds that plaintiff has not sustained his burden of producing sufficient evidence to survive defendant's motion to dismiss. Most of plaintiff's "evidence" amounts to no more than a rambling indictment of the PTO. Plaintiff's most cognizable complaint is that the Commissioners, as well as those members of the judiciary who subsequently reviewed his previous petitions

did not understand the novelty of his invention. However it is clear from the record that plaintiff's application was rejected after the PTO found that all of the elements of plaintiff's patent were contained in another patent (Weinig 0006-0009). The OTO found that the Superconductivity process patented by Weinig would inherently result in the same product that plaintiff hoped to patent. this finding was upheld on appeal to the District court in 1976 and plaintiff has produced no new evidence that this finding was erroneous.

Plaintiff also argues that the Superconductivity work of two recent Nobel prize winners, George Bendnortz and Alexander Muller was anticipated by his own patent application. He asserts that research recently performed in the Chinese Academy of Science supports his contention. Again it is simply unclear how the work performed by the Chinese Academy of Science does any more than support the work of Bendnortz and Muller, or how that work constitutes "newly discovered" evidence rather

than simply new work done in the field. The reports appear to be little more than discuss the experiments performed by Bendnortz and Muller.

The court concludes as a matter of law that these reports do not constitute newly discovered evidence and, therefore, plaintiff's action cannot be sustained under 60 (b) (2).

It is, therefore, this 25th day of July 1989 ORDERED that defendant's Motion to Dismiss is granted : and it is

ORDERED that plaintiff's complaint is dismissed.

John H. Pratt

United States District Judge.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

90-1256

EDWARD HALAS,
Plaintiff-Appellant,
v.

DONALD J. QUIGG,
Defendant-Appellee.

DECIDED: August 13, 1990

Before Nies, chief Judge, Cowen, Senior Circuit Judge and Michel, Circuit Judge.

PER CURIAM

DECISION

This is an appeal from a judgement of the United States Court for the District of Columbia (district court), Halas v. Quigg, No 88-3317 (D.D.C. July 26, 1989). The Court dismissed appellant's complaint in which he sought to reform an adverse judgement in a patent case rendered by the same court on June 13, 1978. His appeal to the United States Court of Appeals for the District of Columbia was transferred to this court because of our exclusive

jurisdiction. We affirm the judgement of the district court.

OPINION

After Mr. Halas' application for a patent was denied by the Board of Patent Appeals, he filed a civil action in the district court, pursuant to 35 U.S.C. § 145. On June 14, 1978, the district court dismissed his complaint, and on appeal the judgement was affirmed by the United States Court of Appeals for the District of Columbia Circuit. thereafter Mr. Halas filed seven separate motions for reconsideration and rehearing with the court appeals, all of them were denied.

In the case before us, the district court properly treated Mr. Halas' complaint entitled "Motion to Reopen Case Based on Additional Evidence" as a motion under Fed. R. Civ. P. 60 (b). Mr. Halas' complaint was based primarily on the ground of newly discovered evidence, and the district court correctly dismissed the complaint, because Rule 60(b) requires that any motion under that rule should

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be made within one year of the judgement. Since his complaint was filed more than ten years after the entry of the original judgement, it is clear that he failed to meet the requirements of the rule. See Goland V. Central Intelligence Agency, 607 F. 2d 339, 372 (D.C. Cir. 1978), cert. denied, 445 U.S. 927 (1980)

The district court also determined that Mr. Halas was not entitled to relief under Fed. Civ. P. 60 (b) (6), which permits a district court to grant relief from judgement for "any other reason justifying relief from the operation of the judgement." It is well settled that relief under this subsection of Rule 60 (b) is an extraordinary remedy, which is used sparingly and one which will not be granted except for good cause shown. See American Iron and Steel Inst. v. EPA, 560 F. 2d 589 (3d cir. 1977). In order to constitute good cause, there must be a showing of exceptional circumstances, "which render it manifestly unconscionable that a judgement be given effect." Greater Boston Television

CCopp v. F.C.C.
Corp V. FCC 463 F. 2d 268, 279 (DC Cir. 1971),
cert denied, 406 U.S. 950 (1972) (quoting [J.
Moore, Federal Practice ¶ 60.37 [1] at 623).

Mr. Halas' complaint was based to a large extent on his contention that the representatives of the Patent and Trademark Office, and the members of the judiciary who thereafter reviewed his several petitions and motions failed to understand the novelty of his invention. The material which he submitted as newly discovered evidence included 19 articles describing experiments conducted by the Chinese Academy of Science . The articles all date from the mid-1980's. Obviously , the material does not constitute newly discovered evidence within the meaning of the rule. The courts have uniformly held that evidence of events occurring after the trial is not newly discovered evidence within the meaning of the rule. See Corex Corp. V. United States, 638 F. 2d 119,121 (9th Cir. 1981). In addition, the other materials presented were not

shown to be relevant.

We have carefully reviewed the material presented in Mr. Halas' brief and must conclude that he has failed to meet the rigid requirements for obtaining relief under Rule 60(b)(6). He has not shown that there are exceptional circumstances in his case which are sufficient to override the strong public policy that there be an end to litigation when a judgement becomes final. See Hines v. Royal Indem. Co. , 253 F.2d 111, 114 (6th cir. 1958).

For the foregoing reasons , we hold that the district court did not abuse its discretion in dismissing Mr. Halas' complaint.